

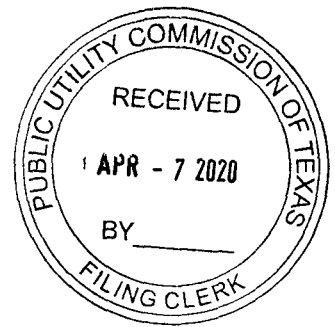


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SOAH DOCKET NO. 473-20-1554.WS  
PUC DOCKET NO. 49225

PETITION BY OUTSIDE CITY	§	BEFORE THE STATE OFFICE
RATEPAYERS APPEALING THE	§	
WATER RATES ESTABLISHED BY	§	OF
THE CITY OF CELINA	§	ADMINISTRATIVE HEARINGS

**CITY OF CELINA'S RESPONSE TO  
RATEPAYERS' OBJECTIONS TO AND MOTION TO STRIKE THE DIRECT  
TESTIMONY OF JASON GRAY**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:**

NOW COMES the CITY OF CELINA ("City") and files this its Response to RATEPAYERS' Objections to and Motion to Strike the Direct Testimony of Jason Gray. As explained herein, all of the Ratepayers' objections should be overruled and the motion to strike should be denied.

**I. BACKGROUND**

The City of Celina timely prefiled the Direct Testimony of Jason Gray on March 17, 2020, pursuant to SOAH Order No. 2.<sup>1</sup> The Ratepayers filed their Objections to this Direct Testimony on March 31, 2020. Pursuant to the aforementioned order, this response is timely filed.

**II. INTRODUCTION**

The Ratepayers' objections to testimony propounded by the City's witness, Jason Gray, are without merit and should be overruled. The Ratepayers' objections to this testimony would strike evidence that is clearly relevant to the affirmative questions that must be addressed in this

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<sup>1</sup> SOAH Order No. 2 Memorializing Prehearing Conferences; Adopting Procedural Schedule; Notice of Hearing (Jan. 29, 2020); see also Direct Testimony of Jason Gray on Behalf of the City of Celina (March 17, 2020).

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docket. Specifically, the testimony and attachments are relevant to the determination of the following:

Do the retail water and sewer rates being charged petitioners by the City of Celina fulfill the requirements of TWC § 13.043(j)6 and 16 TAC § 24.101(i)? In addressing this question, evaluate the following:

- a. Are the rates just and reasonable?
- b. Are the rates unreasonably preferential, prejudicial, or discriminatory?
- c. Are the rates sufficient, equitable, and consistent in application to each class of customers?
  - i. What factors did the City of Celina consider in distinguishing out-of-city ratepayers from in-city ratepayers for purposes of establishing different customer classes?
  - ii. How does the type of customers within the out-of-city customer class differ from the type of customers within the in-city customer class?<sup>6</sup> See TWC § 13.043(j); see also Tex. Water Comm'n v. City of Fort Worth, 875 S.W.2d 332, 335-36 (Tex. App.—Austin 1994) (applying TWC § 13.043(j) in an appeal under § 13.043(0). PUC Docket No. 49225 Preliminary Order Page 4 of 6 SOAH Docket No. 473-20-1554.WS
  - iii. How does the type of water and sewer utility services provided to the out-of-city customer class differ from the type of water and sewer utility services provided to the in-city customer class?
  - iv. How do the costs of infrastructure, facilities, operations, capital improvements, and administrative services to provide service to the out-of-city customer class differ from those costs to provide service to the in-city customers?
  - v. How do the total revenues received by the City of Celina from out-of-city customers relative to the cost of service to that customer class differ from the total revenues received from in-city customers relative to the cost of service to that customer class?<sup>2</sup>

Further, Procedural Rule § 22.221(a) states:

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<sup>2</sup> Preliminary Order at 3–4 (Jan. 17, 2020) (establishing the issues to be addressed in this proceeding).

When necessary to ascertain facts not reasonably susceptible of proof under the Texas Rules of Civil Evidence, evidence not admissible under those rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.<sup>3</sup>

Therefore, even if there had been substance to the Ratepayers' objections (which there is not), Mr. Gray's testimony provides sufficient information under the Texas Rules of Evidence<sup>4</sup> to qualify him as an expert on the matters his testimony addresses. Additionally, ample evidence demonstrates that the attachments reviewed by Mr. Gray are the type of information reviewed in the course of developing an opinion of this nature.<sup>5</sup> A more detailed rationale for overruling each specific objection follows.

### **III. RESPONSE TO OBJECTIONS AND MOTION TO STRIKE**

#### **A. Mr. Gray is qualified as an expert.**

In its specific Objections to Mr. Gray's testimony at 1) Page 5, Line 9 through Page 6, line 7; 2) Page 6, Line 9 through Page 7, Line 2; 3) Page 8, Line 1 through Page 9, Line3; 4) Page 9, Lines 5 through Line 24; 5) Page 9, Line 26 through Page 14, Line5; and 6) Page 24, Lines 11 through Line 17, the Ratepayers repeatedly proffer the exact same objection to Mr. Gray's qualifications as an expert. Ratepayers contend that Mr. Gray is not qualified as an expert to speak on matters concerning the following: 1) the City's water and wastewater system; 2) the location of outside customers; 3) annexation laws; 4) how water is supplied to outside City customers; and 5)

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<sup>3</sup> 16 Tex. Admin. Code § 22.221(a).

<sup>4</sup> Tex. R. Evid. 702 ("A witness who is qualified as an expert by knowledge, skill experience, training or education may testify in the form of an opinion or otherwise . . .").

<sup>5</sup> *Id.* at 703 ("An expert may base an opinion on facts or data in the case that the expert has been made aware of, reviewed, or personally observed.").

how the wastewater system is designed to transport wastewater from the out of City customers to the wastewater plant.<sup>6</sup> For purposes of brevity, the City responds to all as follows.

Mr. Gray is qualified as an expert. Rule 702 of the Texas Rules of Evidence requires an expert to be qualified by his knowledge, skill, experience, training, or education. Mr. Gray's testimony explicitly lays out Mr. Gray's qualifications.<sup>7</sup> Mr. Gray has extensive experience working with wholesale and retail water systems. Not only does he hold a master's degree in Public Administration, Mr. Gray has extensive experience working as a City Manager and, specifically, serving as a general manager for both the City of Celina and City of McKinney's retail water systems. As an Assistant City Manager for the City of Frisco, Mr. Gray directly managed and oversaw all functions of meter reading, billing, water rate planning, and customer service for ratepayers. Mr. Gray also provides consultant work to various cities of the North Texas Municipal Water District. Further, because of Mr. Gray's experience as a City Manager of Celina, and specifically, his responsibilities involving implementing the water system master plan, design, construction, maintenance and all facets of customer billing and service, Mr. Gray has the personal knowledge and experience necessary to testify as to the above matters.

The Ratepayers also assert that as Mr. Gray is not an expert (though he clearly has been qualified as an expert), his opinion testimony must be "(a) rationally based on the witness's perception; and (b) helpful to clearly understanding the witness's testimony or do determining a fact in issue."<sup>8</sup> While, as stated above, Mr. Gray's testimony provides sufficient evidence qualifying him as an expert, even if Mr. Gray was a lay witness subject to Rule 701 of the Texas Rules of Evidence, his testimony satisfies the requirements of Rule 701. The Ratepayers assert that, "Mr.

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<sup>6</sup> Petitioner's Objections to and Motion to Strike the Direct Testimony of Jason Gray at 4, 9, 11, 12, 16.

<sup>7</sup> Direct Testimony of Jason Gray at 2-3 (March 17, 2020).

<sup>8</sup> Petitioner's Objections to and Motion to Strike the Direct Testimony of Jason Gray at 5-6; *see also* Tex. R. Evid. 701.

Gray's testimony does not explain the basis for his perception, nor does it aid in understanding his testimony or assist in determining a fact in issue . . ."<sup>9</sup> The rule requires that the opinion is "rationally based on the witness's perception."<sup>10</sup> The questions posed to Mr. Gray deal with items that he would be able to address as a former City Manager or Celina who specifically oversaw the City's retail water systems. Mr. Gray's experience and knowledge allow him to form an opinion rationally based on his perception.

For the above reasons, the City respectfully requests that all of the Ratepayers' objections and motions to strike the testimony of Mr. Gray as an expert and/or lay witness be overruled.

**B. Ratepayers incorrectly argue that certain testimony is hearsay.**

The Ratepayers assert that the following testimony constitutes hearsay and is prohibited under Tex. R. Evid. 801 and 802: 1) Page 5, Line 9 through Page 6, line 7; 2) Page 6, Line 9 through Page 7, Line 2; 3) Page 8, Line 1 thorough Page 9, Line 3; 4) Page 9, Lines 5 through Line 24; 5) Page 9, Line 26 through Page 14, Line 5. Ratepayers specifically assert that, "Mr. Gray states his opinion on an issue, and he provides no testimony regarding his personal knowledge about the matter."<sup>11</sup> Ratepayers appear to be confused with the meaning of hearsay under the Texas Rules of Evidence. Hearsay is defined as a statement that: "(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement."<sup>12</sup> The Direct Testimony is specific testimony being offered by Mr. Gray for trial. Ratepayers have not identified any statements that Mr. Gray asserts were made by another outside of Mr. Gray's testimony. Further, without waiving the foregoing responses, and

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<sup>9</sup> *Id.* at 6, 9, 11, 12, 16,

<sup>10</sup> *Id.* at 701(a).

<sup>11</sup> Petitioner's Objections to and Motion to Strike the Direct Testimony of Jason Gray at 6, 9, 11, 12, 17.

<sup>12</sup> Tex. R. Evid. 801(d).

in the alternative thereof, to the extent that the Ratepayers claim that the exhibits/figures found in Mr. Gray's testimony are hearsay (which Ratepayers have not specifically done), those figures, depicted at pages 5–7 and 22, are excepted from the hearsay rule under Texas Rule of Evidence 803(6) and (8)<sup>13</sup>.

For the above reasons, the City respectfully requests that all of the Ratepayers' hearsay objections and motions to strike the testimony of Mr. Gray be overruled.

**C. Mr. Gray's Testimony is relevant and should not be excluded.**

The Ratepayers specifically assert that Mr. Gray's testimony at 1) Page 8, Line 1 through Page 9, Line 3; 2) Page 9, Line 26 through Page 14, Line 5; 3) Page 15, Line 1 through Page 16, Line 14; and 4) Page 16, Line 16 through Page 24, Line 9 is "irrelevant to the amount of money that the City spent during the test year to provide service to Petitioners, the change in those expenditures for any known or measurable changes, or the metrics used to calculate Petitioners' rates."<sup>14</sup> The City is not aware where or how Ratepayers' determined that the testimony proffered needs to be relevant to these specific assertions. All questions posed to Mr. Gray, along with Mr. Gray's responses, are part of the City's arguments to specific issues as determined by the Commission as necessary and which must be addressed in this docket. Specifically, this testimony serves to show the cost-risk associated with providing water and wastewater to out-of-city ratepayers. This in turn answers the Commissions stated issues to be addressed including whether the rates charged are just and reasonable and how costs to provide service to out-of-city customers differ from those costs to provide service to in-city customers.<sup>15</sup>

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<sup>13</sup> *Id.* at 803(6), (8).

<sup>14</sup> Petitioner's Objections to and Motion to Strike the Direct Testimony of Jason Gray at 10, 18, 24.

<sup>15</sup> Preliminary Order at 3–4 (Jan. 17, 2020).